

China Borrows From German Law

by Hendrik Wieduwilt

Many of China's laws are self-contradictory or vary from region to region: China is dissatisfied with its civil law. With the help of the best foreign legal systems, China's Communist party is trying to solve this problem. Many of its laws come from Germany.

It has 768 pages, costs only 5 euros, and ranks fifth on Germany's monthly bestseller list published by the "*Boersenblatt des deutschen Buchhandels*". This is the German Civil Code (*BGB*), not John Grisham's newest novel "The Innocent Man" (which ranks eleventh), or Guenter Grass's "Peeling the Onion" (which ranks fourteenth). Not only legal experts look at this book, but also laymen if trouble with a landlord is imminent, for example.

In China it is not that easy, at least not yet. Though new acts are published in government gazettes, an encyclopedic opus for civil law is still missing. Currently there are self-contradictory acts and equal application nationwide has not yet been achieved. Because of this, China's legislature intends to pass an entire civil law before 2010.

This desire for better and more uniform laws shows a change in how laws are viewed in China. "China is taking off the gloves when it comes to business law enforcement", says Dan Harris from the Harris & Moure, a boutique international law firm. He advises small and medium-sized companies in China and warns that "the times when a company could simply ignore the law are over. China today is not the same as five years ago and companies breaking the law get fined every day -- especially foreign ones.

Knut Pisler from the Max-Planck-Institute in Hamburg has been watching the Chinese reformers work for years. "By using international law comparisons, the Chinese are creating sort of a 'best of' foreign law system", Pisler explains. "It will be a very modern law." A remarkable amount originates from the German *BGB*, including the rules about actual authority, for example.

But China's pragmatism has its limits. "The ideologists in the background are problematical," says Pisler. When China's New Property Law was passed in 2007, it happened only after a long ideological process. Chinese Constitutional changes in 2004 had strengthened private property rights, but what is written on a sheet of paper still sometimes gets interpreted in a socialistic way.

Family and estate law are already reformed and tort and international private law should follow. Pisler expects difficulties with the tort law. The host of the Olympic

Games 2008 aspires to higher things and is planning on an act for personal rights. Though German lawyers need to study precedents by German and European courts, in China, taking a look into the law might soon be enough. And there is something to be said for that: unlike in Germany the personal rights shall apply even to corporate entities. Though Knut Pislner assumes the Chinese central government wants to give capitalism a human countenance, he also fears the new law could be used as an instrument against the press.

Financial Times Deutschland, August 19, 2008